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PERBADANAN PENGURUSAN SOLARIS DUTAMAS v. SURUHANJAYA TENAGA MALAYSIA & ANOR

COURT OF APPEAL, PUTRAJAYA
LEE SWEE SENG JCA
GUNALAN MUNIANDY JCA
B GHAZALI CHA JCA
[CIVIL APPEAL NO: W-01(NCvC)(A)-480-09-2020]
18 APRIL 2022

C **Abstract** – *The duties and powers of a Management Corporation (MC) established under the Strata Titles Act 1985 are governed by the Strata Management Act 2013 (SMA), and the SMA, being a special-purpose statute it was, takes precedence over other statutes vis-à-vis such duties and powers. This being the case, the attempt by the Energy Commission herein to compel the MC to undertake the supply of natural gas to the* D *parcel owners at Solaris Dutamas pursuant to the provisions of the Gas Supply (Amendment) Act 2016 was legally untenable. The Energy Commission's notice fell outside the scope of the MC or the SMA; it was ultra vires, invalid and of no effect.*

E ***LAND LAW:*** *Strata title – Management corporation ('MC') – Natural gas supply within multiple component development area – Order for MC to apply for retail licence to take over management of natural gas supply – Whether act require charges levied on end users – Whether MC could only levy payments as mandated under Strata Management Act 2013 ('SMA') – Whether imposition of fee for consumption* F *of gas or electricity provided for – Whether MC would contradict explicit terms of SMA by assuming role of retail licensee – Whether order requiring MC to carry out supply of natural gas ultra vires SMA*

UTILITIES: *Natural gas – Supply of – Management corporation ('MC') – Natural gas supply within multiple component development area – Order for MC to apply* G *for retail licence to take over management of natural gas supply – Whether act would require charges levied on end users – Whether MC could only levy payments as mandated under Strata Management Act 2013 ('SMA') – Whether imposition of fee for consumption of gas or electricity provided for – Whether MC would contradict explicit terms of SMA by assuming role of retail licensee – Whether order requiring* H *MC to carry out supply of natural gas ultra vires SMA*

The appellant was a management corporation ('MC') and the first respondent was a statutory body established under the Energy Commission Act 2001 and is responsible for regulating the energy sector, specifically the electricity and piped gas supply industries. The second respondent was involved in the I business to sell, market and distribute natural gas as well as to develop, operate and maintain the natural gas distribution system. Solaris Dutamas was a multiple component development area and any parcel owner/

proprietor or tenant within the retail component at Solaris Dutamas who required the supply of natural gas had dealt with the second respondent directly in procuring natural gas supply. The appellant was never involved in any supply of gas supply or maintenance of equipment. By a letter dated 4 October 2017, the appellant was informed by the first respondent that there had been changes to the Gas Supply Act 1993 ('GSA') *vide* the Gas Supply (Amendment) Act 2016 that brought changes to the licensing activities of the first respondent. Subsequently, the appellant received a letter dated 15 July 2019 from the second respondent requesting the appellant to apply for a retail licence and to take over the management of the natural gas supply to the property. The appellant voiced its objections to the second respondent. Thereafter, the appellant received another letter dated 24 September 2019 from the second respondent to, *inter alia*, defer the final unbundling date and to extend the existing gas supply agreement until 31 December 2019. The appellant thus filed an originating summons to set aside the decision of the first respondent which was alleged to be *ultra vires* the Strata Management Act 2013 ('SMA') and prayed for consequential orders to maintain the *status quo* of the respective parties. The Judicial Commissioner dismissed the appellant's application holding that (i) s. 59(1)(i) of the SMA imposes wide obligations and powers to the MC under the Act; (ii) s. 59(1)(e) of the SMA is the provision compelling the appellant to comply with the notice or order issued by the first respondent; (iii) s. 149 of the SMA does not prohibit the appellant from entering into an agreement for the purposes of supplying, managing and maintaining natural gas supply so long as the agreement is not made and operated to annul, vary or exclude any of the provisions in the SMA; and (iv) the appellant as a MC was responsible to obtain a retail licence and supply gas to the owner/tenant/individual or to the owner/tenant/individual's premises after the implementation of the amendment to the GSA. Hence, this appeal. The issues raised in this appeal pertained to: (i) the functions, responsibilities and powers of the appellant and the respondents under s. 14(1)(f) and (M) of the Energy Commission Act 2001 ('ECA'); (ii) the provisions relating to natural gas; and (iii) whether the amendment to the ECA is *ultra vires* the Strata Titles Act 1985 ('STA').

Held (allowing appeal in part)
Per Gunalan Muniandy JCA delivering the judgment of the court:

(1) In discharging its management duties, the MC is vested with wide powers as provided for in s. 59(2) of the SMA. However, the powers are purely for the purpose of management and maintenance of the property as prescribed in the SMA. What the SMA does not expressly or impliedly authorise must be considered as prohibited. (paras 26 & 30)

(2) Under s. 11 of the GSA, all activities relating to, *inter alia*, gas supply, import and distribution are activities that are required to be licensed and no person is allowed to carry out any such activity unless he is licensed

under the Act. The letter dated 4 October 2017 must be read together with the subsequent letters dated 15 July 2019 and 24 September 2019 sent by the second respondent to the appellant. Pursuant to the letters, the respondents sought to invoke the amendment to the GSA to direct the MC to secure a retail licence to supply natural gas to the end users which would require charges being levied on them. (paras 40, 45 & 47)

(3) As a statutorily incorporated body, the MC is required to act strictly within the legal confines of the statute concerned and is permitted to levy payments only as mandated by the statute and nothing else. Nowhere in the statutory regime is there any provision for the collection of any fees from tenants nor any jurisdiction for the MC to impose fees based on any formula other than the share units. It would follow that fee cannot be based on consumption of gas, electricity, *etc*. for which there is no provision or formula for calculation of the fee. As the consumption of gas had no correlation with the share units, it followed that the MC was not empowered to treat gas consumption fees as 'charges' that may be imposed by the MC under the SMA. (paras 49, 53 & 54)

(4) The SMA mandates only two accounts that can be opened by the developer or the MC: (i) the maintenance account; and (ii) the sinking fund account. The usage of these accounts is strictly for the purposes prescribed in s. 50(3) and s. 51(2) of the SMA. Both the subsections use the phrase 'shall be used solely' which implies the strictness in the use of the accounts as mandated. If the MC were to assume the role of a retail licensee under the GSA, the functions and duties that the MC would have to perform as stipulated under the GSA would contradict the explicit terms of the SMA pertaining to the management and maintenance of the two permitted accounts. Any attempt to compel the MC to undertake a role that would in effect be contrary to its limited functions and duties under the SMA, should not be permitted. Accordingly, any notice or order requiring the appellant to carry out the supply of natural gas to individual unit owners or proprietors was *ultra vires* the SMA and hence, must be declared invalid and of no effect. (paras 57, 58 & 66)

Case(s) referred to:

Badan Pengurusan Bersama Paradesa Rustika v. Sri Damansara Sdn Bhd [2013] 9 CLJ 813 FC ***(refd)***

Boniface Lobo Robert V Lobo & Anor v. Tribunal Pengurusan Strata, Putrajaya & Ors [2017] 6 CLJ 537 HC ***(refd)***

Ekuiti Setegap Sdn Bhd v. Plaza 393 Management Corporation [2019] 2 CLJ 592 CA ***(refd)***

Envac Scandinavia A B v. Muhibbah Engineering (M) Bhd [2020] 1 LNS 1623 HC ***(refd)***

Muhamad Nazri Muhamad v. JMB Menara Rajawali & Anor [2019] 10 CLJ 547 CA ***(refd)***

Perbadanan Pengurusan Endah Parade v. Magnificient Diagraph Sdn Bhd [2014] 5 CLJ 881 CA ***(refd)***

Legislation referred to:
Energy Commission Act 2001, s. 14(1)(f), (M)
Gas Supply Act 1993, ss. 4, 11, 14(g), (k), (o), 37C
Rules of Court 2012, O. 28
Strata Management Act 2013, ss. 2, 25, 50(3), 51(2), 52, 54(1)(e), 59(1)(e), (i), (2), 148, 149

For the appellant - Lai Chee Hoe & Ooi Xin Yi; M/s Chee Hoe & Assocs
For the 1st respondent - John Clark Sumugod, Oh Kei Zuin & Mohd Aiman Syafiq; M/s Sidek Teoh Wong & Dennis
For the 2nd respondent - Shaikh Abdul Saleem Shaikh Abdul Karim & Yunis Arliza; M/s Shaikh David & Co

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Suit No: WA-24NCVC-2395-11-2019 (overruled in part).]

Reported by S Barathi

JUDGMENT

Gunalan Muniandy JCA:

Introduction

[1] The present action commenced by the appellant/plaintiff against the respondents/defendants ('R1 & R2') by originating summons ('OS') was dismissed with no order as to costs. In essence, the OS was to set aside the decision of the Energy Commission ('EC') affecting the appellant which decision was alleged to be *ultra vires* the Strata Management Act 2013 ('SMA').

[2] The above OS was pursuant to the Gas Supply Act 1993; the Gas Supply Regulations 1997; O. 28 of the Rules of Court 2012 ('ROC') and the Courts of Judicature Act 1964.

Background Facts

[3] The appellant is a Management Corporation ("MC") established under the Strata Titles Act 1985 having an address for service at Level G2, Block D1, Solaris Dutamas, No. 1, Jalan Dutamas 1, 50480 Kuala Lumpur.

[4] The first respondent is a statutory body established under the Energy Commission Act 2001 and is responsible for regulating the energy sector, specifically the electricity and piped gas supply industries, in Peninsular Malaysia and Sabah.

[5] The second respondent is a public listed company with an address for service at No. 5 Jalan Serendah 26/17, Seksyen 26, 40732 Shah Alam, Selangor Darul Ehsan. The second defendant is involved in the business to sell, market and distribute natural gas as well as to develop, operate and maintain the Natural Gas Distribution System within Peninsular Malaysia.

[6] Solaris Dutamas is a multiple component development area which consists of:

(i) Residential blocks;

(ii) Retail outlets;

(iii) One mall;

(ii) 18 office blocks; and

(v) Car parks.

[7] Vacant possession of the development area was delivered on or around February 2010. Various businesses were set up at the retail components within Solaris Dutamas, including food and beverage outlets.

[8] Throughout the years since delivering of vacant possession, any parcel owner/proprietor or tenant within the retail component who required the supply of natural gas had dealt with the second respondent directly in procuring natural gas supply. As a result of which an agreement would be entered by the end user with the second respondent for the supply of natural gas.

[9] In entering into an agreement between the parcel owner/proprietor/tenant with the second respondent, the parcel owner/proprietor/tenant is made to pay a fee to the second respondent for primarily supplying natural gas to the parcel and it is the second respondent's duty to maintain the gas supply equipment and pipes.

[10] The appellant was never involved in any supply of gas supply or maintenance of equipment. In fact, the appellant was in no capacity to be involved in delivery of gas or maintaining the equipment.

[11] Over the years, the second respondent had dealt with the end users directly on a contractual basis without going through the appellant since the supply of natural gas to the end users and maintenance of, the equipment at the said development area is solely within the responsibility of the second respondent.

[12] On or around 4 October 2017, the appellant received a letter dated 4 October 2017 from the first respondent informing the plaintiff that there had been changes to the Gas Supply Act 1993 *vide* the Gas Supply (Amendment) Act 2016 that brought changes to the licensing activities of the first respondent. However, there was no further information provided by the first respondent as to the significant changes brought about by the Act.

[13] After the said letter was received, the appellant did not receive any further information or feedback from the first respondent.

[14] However, on or around 15 July 2019, the appellant received a letter dated 15 July 2019 from the second respondent requesting the appellant to apply for a retail licence and to take over the management of the natural gas supply to the said property.

[15] The appellant had voiced its objections to the second respondent as to the need of taking over the supply and management of gas supply which is clearly outside the scope of a management corporation and runs afoul of the purview of Strata Management Act 2013.

[16] Subsequently the appellant received another letter dated 24 September 2019 from the second respondent to, *inter alia*, to defer the final unbundling date and to extend the existing Gas Supply Agreement until 31 December 2019.

[17] The appellant then filed an OS for the following reliefs:

(i) That any attempts from and/or actions taken by the first and/or second defendant to compel the plaintiff to take over the duty from the second defendant to *inter alia*, supply natural gas to the development area and to maintain the pipelines or distribution pipelines or a piping system and to any gas appliance in the premises of a consumer is *ultra vires* the Strata Management Act 2013;

(ii) That any attempts from and/or actions taken by the first defendant to compel the plaintiff to obtain a retail license in order for the second defendant to continue supplying natural gas to the end user of the development area is *ultra vires* the Strata Management Act 2013;

(iii) That *status quo* be maintained wherein the supply of natural gas and the maintenance of the equipment relating to the supply of natural gas continue to lie with the second defendant;

(iv) That the second defendant shall continue to supply natural gas to the end users within the development area and further continue to maintain the equipment relating to the supply of natural gas;

(v) Costs; and

(vi) Any other further reliefs as the Honourable Court deems fit and expedient.

[18] On 27 August 2020, the learned Judicial Commissioner ("LJC") dismissed the appellant's OS dated 14 November 2019 with no order as to costs.

[19] The LJC held that:

(i) That s. 59(1)(i) of the SMA imposes wide obligations and powers to the Management Corporation under the Act.

(ii) Section 59(1)(e) of the SMA is the provision compelling the appellant to comply with the notice or order issued by the first defendant.

(iii) Section 149 of the SMA does not prohibit the plaintiff from entering into an agreement for the purposes of supplying, managing and maintaining natural gas supply so long as the agreement is not made and operated to annul, vary or exclude any of the provisions in the SMA.

(iv) The plaintiff as a Management Corporation that handles Solaris Dutamas Development Area is responsible to obtain a retail licence and supply gas to the owner/tenant/individual or to the owner/tenant/individual's premises after the implementation of the amendment to the Gas Supply Act 1993.

[20] The appellant submitted that:

(i) The appellant has no capacity and/or expertise to take over the supply of natural gas and the maintenance and management of the gas supply system.

(ii) The Gas Supply (Amendment) Act 2016 is *ultra vires* the Strata Management Act 2013.

(iii) The requirement for the appellant to carry out the supply of natural gas is in contravention of the SMA as the appellant's duties and powers are limited by the SMA.

(iv) Sections 148 and 149 of the SMA expressly prohibit the appellant from entering into any such agreement and/or arrangement.

(v) As SMA is a specific statute, the provisions of the Gas Supply (Amendment) Act 2016 must yield to the Strata Management Act 2013.

Our Decision

[21] The issues that the LJC considered to be for determination are as follows:

(i) The functions, responsibilities and powers of the appellant and the respondents under s. 14(1)(f) and (M) of the Energy Commission Act 2001 ('ECA').

(ii) The provisions relating to natural gas.

(iii) Whether the amendment to the ECA is *ultra vires* the Strata Titles Act 1985 ('STA').

[22] In support of this appeal, the main issue advanced by the appellant was whether s. 59(1) of the SMA imposes wide obligations and confers wide powers on, the MC as held by the LJC.

[23] As pointed out by the appellant, Solaris Dutamas is a strata scheme and the functions of the MC are governed by the following strata regime:

(i) SMA (and its regulations);

(ii) STA (and its regulations).

[24] The reliefs that were sought by the appellant in the OS are premised on the ground that certain attempts and/or actions by R1 and/or R2 as follows are contrary to or *ultra vires* the SMA:

(i) Compelling the appellant to take over the duty from the second defendant, to *inter alia*, supply natural gas to the development area and to maintain the pipelines or distribution pipelines or a piping system to any gas appliance in the premises of a consumer.

(ii) Compelling the appellant to obtain a retail licence in order for the second defendant to continue supplying natural gas to the end user of the development area.

The appellant further sought the following consequential reliefs:

(i) That the *status quo* be maintained wherein the supply of natural gas and the maintenance of the equipment relating to the supply of natural gas continue to lie with the second defendant ('D2').

(ii) That D2 shall continue to supply natural gas to the end users within the development area and further continue to maintain the equipment relating to the supply of natural gas.

[25] We must first and foremost bear in mind that the appellant as a Management Corporation ('MC') established under the SMA has a statutory role to perform its duties and exercise powers provided for under s. 59 of the SMA which are reproduced below for ease of reference:

> (1) The duties of a management corporation shall be as follows:
>
> a. to properly maintain and manage the subdivided building or land and the common property and keep it in a state of good and serviceable repair;
>
> b. to determine and impose the Charges to be deposited into the maintenance account for the purposes of proper maintenance and management of the subdivided buildings or lands and the common property;
>
> c. to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account for the purposes of meeting the actual or expected expenditure specified under subsection 51(2);
>
> d. to effect insurance according to this Act or to insure against such other risks as the proprietors may be special resolution direct;
>
> e. to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property;

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f. to prepare and maintain a strata roll for the subdivided buildings or lands;

g. to ensure that the accounts required to be maintained by the management corporation under this Act are audited and to provide audited financial statements for the information to its members;

B

h. to enforce the by-laws; and

i. to do such other things as may be expedient or necessary for the proper maintenance and management of the subdivided buildings or lands and the common property.

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[26] In discharging its management duties, the MC is vested with wide powers as provided for in s. 59(2) of the SMA. However, it is vital to note that the powers provided for are purely for the purpose of management and maintenance of the property as prescribed in the SMA.

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[27] We share the view of the appellant that s. 59 of the SMA comprises statutory powers that cannot be expanded and or varied without an amendment to the stature itself. This was not the intention of the legislature when SMA came into force considering its objects and purpose.

[28] Much reliance was placed by the appellant on the Court of Appeal ('COA') case of *Ekuiti Setegap Sdn Bhd v. Plaza 393 Management Corporation* [2019] 2 CLJ 592 where the court held that the MC cannot act beyond what was mandated by the Strata Titles Act:

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> Similarly in the instant case, we find that the STA mandated that contributions to the management fund be determined on a share unit basis. Any other basis to determine the quantum of contribution would be contrary to the STA and thus illegal. The fact that the charges levied on the square foot basis are in accordance with the resolutions passed at the plaintiff's general meeting is immaterial, given that the plaintiff cannot act beyond the provisions of the STA.

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[29] Another recent COA case echoed the same principle, *Muhamad Nazri Muhamad v. JMB Menara Rajawali & Anor* [2019] 10 CLJ 547; [2020] 3 MLJ 645, where the COA held that it is not the duty of the court to read words into a statute when it is clear such as the SMA.

> [34] The court will not read words into a statute unless clear reason for it is to be found in the statute itself (*Sri Bangunan Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Anor* [2007] 6 MLJ 581 (FC)). Therefore, in construing any statute, the Court will firstly, look at the words in the legislation and apply the plain and ordinary meaning of the words in the statute. If there is any ambiguity to the words used, the Court is duly bound to accept it even if it may lead to mischief. Where the language used is clear and unambiguous, it is not the function of the Court to re-write the statute in a way which it considers reasonable.

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> [36] As a creature of statute, the powers of the JMB are limited and circumscribed by the SMA 2013 which regulates it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its establishment, or may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorized. What the SMA 2013 does not expressly or impliedly authorize is to be taken to be prohibited.

[30] An extension of the above principle endorsed by both the COA decisions alluded to would be, as proposed by the appellant, that what the SMA does not expressly or impliedly authorise must be considered as prohibited. This, to our minds, is a correct and logical construction of the governing law specifically for stratified properties.

[31] Of importance for our determination was the question whether the LJC gave too wide an interpretation of s. 59(1)(i) of the SMA such that it ran foul of the SMA which, purportedly, is intended to confine the powers of the MC for purposes within the four corners of the said law. Did the interpretation by the LJC instead give rise to uncertainty as to the scope of duties of the MC?.

[32] We were also called upon to construe correctly the phrase "to do such other things as may be expedient or necessary" in the context of the intention of SMA which only confers specific and express powers on and duties to, the MC. In this regard, we have duly noted that nowhere in the SMA are stated powers to supply natural gas to the development area concerned.

[33] The question, hence, was whether such an onerous obligation which was not consistent with the objects and purpose of the SMA and not provided for in the Act could be imposed on the appellant as the MC in the course of performing its statutory role.

[34] It is now settled law that the powers of the MC as a creature of the SMA must be interpreted by adopting a strict approach. (See *Boniface Lobo Robert V Lobo & Anor v. Tribunal Pengurusan Strata, Putrajaya & Ors* [2017] 6 CLJ 537, COA, affirmed by the Federal Court).

[35] R1, being the party that opposed this appeal, firstly contended that the appellant's submission and the grounds of appeal as per the memorandum of appeal were inconsistent with the reliefs prayed for at the High Court *vide* the OS. Hence, the appeal should not be considered on the merits if in fact it had any. However, we were not in agreement with R1's contention on this preliminary issue as, in our view, the grounds of appeal raised several important issues and points of law of significance that warranted our serious consideration. Thus, this appeal ought to be heard on merits and not dismissed *in limine* as the said issues merited our resolution and determination.

[36] To support its case, R1 placed heavy reliance on the provisions of several legislation as follows:

(i) The Gas Supply Act 1993 and The Gas Supply Regulations 1997;

(ii) The Strata Management Act 2013 ('SMA');

(iii) The Gas Supply (Amendment) Act 2016; and

(iv) The Energy Commission Act 2001 ('ECA').

[37] In particular, R1 highlighted to us the functions, responsibilities and powers of the EC in relation to the provision and supply of energy throughout the country. For case of reference, we reproduce below the relevant provisions of the ECA material to the issue at hand:

Energy Commission Act 2001

An Act to provide for the establishment of the Energy Commission with powers to regulate the energy supply activities in Malaysia, and to enforce the energy supply laws, and for matters connected therewith.

Section 14: Functions And Powers Of Commission

14. The Commission shall have all the functions imposed on it under the energy supply laws and shall also have the following functions:

(a) …;

(b) …;

(c) …;

(d) to implement and enforce the energy supply laws;

(e) …;

(f) to regulate all matters relating to the supply of gas through pipelines and to protect any person from dangers arising from the supply of gas through pipelines and the use of gas as provided under the gas supply laws;

(g) to promote efficiency, economy and safety in the generation, production, transmission, distribution, supply and use of electricity and in the supply of gas through pipelines and the use of gas supplied through pipelines;

(i) …;

(j) …;

(k) …;

(m) to carry out any function conferred by or under the energy supply laws;

(n) …;

(o) to carry on all such activities as may appear to the Commission requisite, advantageous or convenient for the purpose of carrying out or in connection with the performance of its functions under the energy supply laws.

And,

(2) The Commission shall have all such powers as may be necessary for, or in connection with, or reasonably incidental to, the performance of its functions under the energy supply laws.

[38] Similar provisions in the gas supply legislation governing the EC's functions, duties and powers in relation specifically to gas supply were referred to us to support the proposition that the ECA must be read together with the Gas Supply Act 1993 ('GSA') to get a clearer picture of the legislation which regulate gas supply activity in the country.

[39] We do not propose to reproduce the provisions governing the functions and duties of the EC under s. 4 of the GSA which principally governs the activity of gas supply and distribution to consumers. However, it would be instructive to make reference to s. 37C of the GSA read together with the GSA (Amended) 2016 as it is relevant to the main issue in dispute in this appeal pertaining to powers of the EC to issue guidelines or directions to a licensee. The relevant parts of s. 37C that we need to keep in mind are as follows:

37C. Guidelines or directions by Commission

(1) The Commission may issue guidelines or directions on any matter as provided under this Act or as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) …

(3) The Commission may issue directions in writing to any licensee, competent person or any person on the compliance or non-compliance of this Act or its subsidiary legislation, ….

(4) …

(5) A licensee, competent person or any person shall comply with the guidelines and directions.

[40] Now, under s. 11 of the GSA all activities relating to, *inter alia*, gas supply, import and distribution are activities that are required to be licensed and no person is allowed to carry out any such activity unless he is licensed under the Act. In this regard, R1 contended that its letter dated 4 October 2017 which was the sole proof relied upon by the appellant was actually addressed to the licensee, being the owner of the Gas Piping System and not to the appellant who was the MC of the Solaris Dutamas Condominium.

[41] More importantly, it was contended that the contents of the said letter ought to be scrutinised to identify its true purpose and intent which, contrary to the appellant's assertion, did not constitute an attempt or an action to compel the appellant to take over the responsibility of R2 to, *inter alia*, supply natural gas to built-up areas and to maintain the gas piping or distribution system to users' premises.

[42] Neither was it intended to compel the appellant to obtain a retail licence. As can be seen, the contents of the said letter issued by R1 figured prominently in the resolution of the dispute in the instant case. R1's contention was that the purpose of this letter was not, expressly or impliedly, to implement and enforce the provisions of the GSA (Amended) 2016. On the contrary, the clear purpose was to inform all owners of Gas Piping Systems of the amendments to the GSA and this step was consistent with the functions of the EC stipulated in s. 14(g), (k) of the GSA.

[43] Importantly, it was contended that the implementation of the EC's functions under s. 14(g), (k) and (o) of the GSA was not shown to be *ultra vires* the SMA. This then is the central question that arose for our determination, namely, whether the impugned act of the EC complained of was merely implementation of its statutory functions and duties or whether the EC had acted in a manner that was *ultra vires* the SMA.

[44] In regard to the issue at hand, at the outset we have to give due attention the reliefs prayed for in the appellant's OS against the actions and/or attempts of both defendants ('R1 & R2') in regard to the supply of gas to the development area and maintenance of gas distribution pipelines. Also, in regard to the attempts and/or actions of R2 to compel the appellant to obtain a retail licence in order to enable D2 to continue supplying gas to end users as before. The appellant sought to declare the said move by R1 and R2 as *ultra vires* the SMA and prayed for consequential orders to maintain the *status quo* of the respective parties.

[45] Considering the reliefs prayed for, our considered view is that the said letter dated 4 October 2017 should not be viewed in isolation but read together with the subsequent letters dated 15 July 2019 and 24 September 2019 sent by R2 to the appellant. The subsequent letters plainly appeared to be a follow-up to the first letter issued by the EC to the appellant intended to serve as a notification to the latter of changes to the GSA in respect of the management of gas supply. The purpose of the second letter in particular is abundantly clear wherein the appellant was requested by R2 to apply for a retail licence and to take over the management of the natural gas supply to the development area.

[46] As correctly pointed to us by the appellant, the said three letters must be viewed cumulatively to determine their true purpose and effect. We are in agreement with the appellant's summary of the implications of these letters as follows:

> Further, in the course of issuing letters to the Plaintiff, the Defendants demanded that the Plaintiff apply for a retail licence and supply natural gas. If the Plaintiff is to take over the management of the gas supply, it is inevitable that the Plaintiff is required to levy the said charges to the end users (which means the tenants and not the parcel owners).

[47] Our view is that the respondents' contention that this trail of letters from R1 and R2 were mere notifications is misconceived as it is plain that R1 and R2 in fact sought to invoke the amendment to GSA to direct the MC to secure a retail licence to supply natural gas to the end users which would require charges being levied on them. This would then raise the pertinent and crucial question as to whether the MC had the legal authority to levy charges which were not provided for under the statutory regime prescribed in the SMA.

[48] We share the view of the Court of Appeal in *Perbadanan Pengurusan Endah Parade v. Magnificient Diagraph Sdn Bhd* [2014] 5 CLJ 881 where it was held on this point of law that:

> (2) The charges that can be imposed and the means by which they can be imposed are within the context and confine of the statute. Within the context of the STA, in reading s. 45 in conjunction with s. 46, the expenses incurred or to be incurred by the management corporation can include not only administrative expenses but also expenses related to the maintenance of the building. As clearly indicated in ss. 43(1) and 45(1), the duties of the management corporation include the duty to insure and keep insured the subdivided building and to pay premiums on any insurance effected by it. The management corporation as a body incorporated under statute can only levy payments which are mandated by the statute. The expenses referred to in s. 45 of the Act include the payment of premiums of insurance and other payments in connection with discharging any other obligation of the management corporation. In fixing the contribution to be paid by each proprietor, the management corporation must budget for it for approval at the general meeting. The charges should be properly decided by the unit holders in the general meeting. The issue of proper authority to impose a levy was too important to be left to the management corporation or the council to decide as a matter of discretion. (paras 34 & 35)

[49] From our perusal of the above judgment which we respectfully adopt, the principle to be gleaned is that the MC being a statutorily incorporated body is required to act strictly within the legal confines of the statute concerned and is permitted to levy payments only as mandated by the statute and nothing else. The SMA allows only maintenance charges and sinking funds to be imposed on the unit owners.

[50] Section 2 of the SMA defines 'charges' widely as follows:

Section 2 Interpretation

"Charges" means any money collected to be deposited into the maintenance account.

[51] Whilst the above definition appears to be wide, the illustrations to the subsequent sections place limitations as below:

(a) It is a fee payable by purchaser/parcel owner/proprietor (and not a tenant who uses natural gas);

(b) The charges payable must be by way of share units (and cannot be by way consumption/usage of gas or utilities).

[52] What is also abundantly clear from the statutory regime under the SMA is that a scheme of payment is statutorily imposed on the purchaser/parcel owner or proprietor as the case may be (see ss. 25 and 52 of the SMA), wherein only charges for maintenance and management of the sub-divided building or land and common property and contribution to the sinking fund are payable.

[53] Nowhere in the statutory regime is there any provision for the collection of any fees from tenants nor any jurisdiction for the MC to impose fees based on any formula other than the share units. It would follow that fee cannot be based on consumption of gas, electricity, etc. for which there is no provision or formula for calculation of the fee.

[54] As contended by the appellant, the consumption of gas has no correlation with share units which means that the MC is not empowered to treat gas consumption fees as 'charges' that may be imposed by the MC under the SMA.

[55] We would note that the weight of authority, up to the apex court level, leans towards a strict interpretation of the SMA when it concerns powers vested in any authority or body set up under the SMA, particularly in the imposition of the fees or charges.

[56] The Federal Court in *Badan Pengurusan Bersama Paradesa Rustika v. Sri Damansara Sdn Bhd* [2013] 9 CLJ 813; [2014] 1 MLJ 14 remarked in no uncertain terms that a law granting powers to a public authority, in that case the Commissioner of Buildings, should be construed strictly where the issue of jurisdiction arises. It was held that:

> On the learned judge of the High Court's finding that the respondent's conduct in not challenging the commissioner's lack of jurisdiction would appear to indicate that the respondent had accepted the commissioner's jurisdiction to determine the matter, we are in full agreement with Court of Appeal's view that no amount of consent or acquiescence by the respondent could confer on the commissioner a power which the Act had not conferred upon him. The powers and duties of the commissioner are circumscribed by the provisions of the Act and he does not have power which has not been granted to him under the Act.

[57] It is also of significance that the SMA mandates only two accounts that can be opened by the developer or the MC: (i) the maintenance account; and (ii) the sinking fund account. The usage of these accounts is strictly for the purposes prescribed in s. 50(3) and s. 51(2) of the SMA. Nowhere in these sections is there any provisions for the collection of fees or charges for funds dealing with the supply of any type of utility, be it water, gas, power, etc. Both the subsections use the phrase 'shall be used solely' which implies without doubt the strictness in the use of the accounts as mandated. They are essentially means to ensure proper and effective maintenance of the common property in respect of the maintenance account and to cover actual or expected capital expenditure for the upkeep of the common property for the sinking fund account. No other purpose for the accounts is provided for. We concur with the proposition that in law, under the statutory regime strict compliance is required and the body managing the development is prohibited from using the accounts to collect funds for any other extraneous purpose that is not provided for. We view the use of the said accounts for any such other purpose would be contrary to law considering the objects and intention of the SMA.

[58] It is clear to us that if the MC were to assume the role of a retail licensee under the GSA as apparently required by R1 and R2, the functions and duties that the MC would have to perform as stipulated under the GSA would contradict the explicit terms of the SMA pertaining to the management and maintenance of the two permitted accounts. Hence, any attempt to compel the MC to undertake a role that would in effect be contrary to its limited functions and duties under the SMA should not be permitted.

[59] Several other grounds of appeal have been raised by the appellant which are inter-related with the core grounds that we have already discussed and as such, do not propose to deliberate upon these secondary grounds. We would, however deliberate upon a crucial finding of the LJC that s. 54(1)(e) of the SMA is an enabling provision that would operate to compel the appellant to comply with the notice or order issued by R1. According to the appellant, the LJC's view would directly contradict the strict and restrictive approach adopted by the superior counts in the interpretation of the provisions of the SMA in so far as the duties and powers of the MC are concerned.

[60] From a plain and literal reading of the clear, unambiguous wording of s. 59(1)(e) of the SMA, we are in entire agreement with the appellant's proposition that the provisions of s. 59(1)(e) of the SMA are explicitly clear in that the reference to notice made by the local authority is in direct relation to nuisance on the common property or any repairs or work to be done in respect of the common property and nothing else. For ease of reference, s. 59(1)(e) provides as follows:

A Section 59 Duties and powers of management corporation

(1) The duties of a management corporation shall be as follows:

(e) to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property.

[61] Reading the words used as whole and not in isolation with due attention and effect being given to the legislative purpose of the Act to strictly confine the functions, duties and powers of the MC to a limited sphere, we are satisfied that any notice to compel the plaintiff to take up the supply of the natural gas cannot be construed to fall within the ambit of this impugned sub-section.

[62] We are also minded to refer to *Envac Scandinavia A B v. Muhibbah Engineering (M) Bhd* [2020] 1 LNS 1623, where the High Court correctly set out the rules governing the interpretation of statutes in a given case as follows:

[21] ... (a) The Legislature does not legislate in vain, and the interpretation of words in a section of the statue should not to the extent of rendering redundant or superfluous other words used in another section in the same statute: Eusoffe Abdoolcader SCJ in *Foo Loke Ying v. Television Broadcasts Limited* [1985] MLJ 35, following House of Lords in *Southwest Water Authority v. Rumbles* [1985] 2 WLR 405 at 411. In Foo Loke Ying, the Supreme Court held that all words in a statute are to be considered; on presumption that the Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment and it is presumed that if a word or phrase appears in a statute it was put there for a purpose: See also Privy Council decision in *Enmore Estates v. Darsan* [1970] AC 497 21 at p. 506.

[63] Being satisfied that a literal approach should be adopted in interpreting s. 59(1)(e) of the SMA as its terms are neither vague nor ambiguous, it is plainly obvious to us that the MC is not required to comply with any notice or order given if it is not confined to the prescribed purposes and importantly, the notice must be in respect of the common property only and cannot extend to individual units or parcels privately owned. Hence, our conclusion on this issue is that the LJC had erroneously construed s. 59(1)(e) of the SMA to hold that it was a provision that could compel the appellant to comply with the impugned notice or order issued by R1. Considering the statutory regime of the SMA which makes no room for the MC to manage the supply of natural gas to the development area, the correct and logical interpretation of this sub-section would be that the notice or order should be restricted to the common property only for the purposes as specifically stated

in the said sub-section. The supply of natural gas as per the said notice or order by R1 is certainly not within the ambit of s. 59(1)(e) of the SMA as wrongly held by the LJC.

Conclusion

[64] Our unanimous decision is that the LJC in dismissing the appellant's OS for the reasons given had erred in law and/or in fact resulting from a flawed interpretation of the provisions of the law applicable to the issues in dispute and insufficient judicial appreciation of the relevant facts.

[65] The error warrants appellate intervention by us to rectify the same, particularly to give effect to the provisions and objects of the specific law governing the management of stratified properties: the SMA.

[66] We would conclude that the duties and powers of the appellant in its capacity as the MC are restricted by the SMA, which is a special statute and as such, the provisions of the GSA (Amended) 2016 must yield to the former. Accordingly, any notice or order that requires the appellant to carry out the supply of natural gas to individual unit owners or proprietors in our considered view, is *ultra vires* the SMA and hence, must be declared invalid and of no effect.

[67] In the circumstances, we allow this appeal in part and set aside the decision of the High Court. Our order, in allowing this appeal, would be as follows:

> Therefore we would allow the declaration sought in prayer 1 except the prayer "and to maintain the pipelines or distribution pipelines or a piping system and to any gas appliance in the premises of a consumer."
>
> The issue of who is to be in charge of which portion of the gas piping is not properly before the Court as the proper drawings of the gas piping system have to be produced and witnesses called.
>
> We also grant an OIT of prayers 2, 3, 4 and costs of RM20,000 to be paid by R1 to the Appellant here and below. We make no order as to costs with respect to R2.